

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	NO. 18-296-1
	:	
KEVIN DOCKERY	:	
<i>Defendant</i>	:	

ORDER

AND NOW, this 25th day of January 2019, upon consideration of Defendant's *motion to suppress physical evidence and memorandum of law in support thereof*, (Doc. 25), the Government's response in opposition, (Doc. 27), Defendant's supplemental memorandum in support of the motion to suppress, (Doc. 29), the Government's response to Defendant's supplemental memorandum, (Doc. 30), and the evidence and oral argument heard at the motion to suppress hearing held on January 24, 2019, it is hereby **ORDERED** that Defendant's *motion to suppress physical evidence* is **DENIED**.¹

¹ At the evidentiary hearing held on the *motion to suppress*, the Government presented the testimony of Detective Timothy Dunne ("Detective Dunne"), who testified that he has been a Philadelphia police officer for 15 years and a detective since 2015. Detective Dunne further testified that around 5:00 a.m. on March 18, 2018, he entered the Wawa convenience store at 20th Street and Pennsylvania Avenue, adjacent to the Central Detectives 9th Police District office in Philadelphia, in plain clothes, unarmed, and without handcuffs or identification. While he was at the register to pay for a pretzel and a water, he observed Defendant arguing with a female through clenched teeth, roughly ten feet from where Detective Dunne was standing. The female was later identified as Amber Purnell ("Ms. Purnell"). Detective Dunne observed Defendant reach into Ms. Purnell's pocketbook and pull money out, which fell to the ground like confetti. Detective Dunne then observed Defendant knee Ms. Purnell "in the stomach area." Detective Dunne testified that Defendant's knee made contact with Ms. Purnell, and that he believed that Defendant intended to "beat up his girlfriend, hurt her." Preferring not to intervene directly without identification or a weapon, Detective Dunne returned to the police office to request the assistance of Officer Newman, who was in uniform, and then returned to the Wawa within roughly one minute. As Detective Dunne and Officer Newman were entering the Wawa store, Ms. Purnell was exiting, crying. Detective Dunne and Officer Newman then detained Defendant inside the store, and placed him in handcuffs. Detective Dunne went to find Ms. Purnell, spoke with her briefly, and returned to Defendant and Officer Newman. As he approached Defendant, Detective Dunne observed bulges in Defendant's pants pockets, and conducted a search of Defendant's person. From Defendant's pockets and waist area, Detective Dunne felt and recovered \$4,000 in cash and a loaded 9mm Ruger handgun. Detective Dunne testified that he had initially returned to the store with Officer Newman with the intention of arresting Defendant for assault.

In Defendant's *motion to suppress*, he argues that all physical evidence, especially the handgun, should be suppressed because Detective Dunne lacked probable cause to arrest Defendant and, therefore,

BY THE COURT:

/s/ Nitza I. Quiñones Alejandro

NITZA I. QUIÑONES ALEJANDRO

Judge, United States District Court

the search conducted was illegal. Conversely, the Government argues that Detective Dunne had sufficient probable cause to arrest Defendant for simple assault or even robbery and, consequently, that the search incident to the arrest was lawful.

As the Supreme Court explained in *United States v. Robinson*, 414 U.S. 218, 235 (1973):

A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification. It is the fact of the lawful arrest which establishes the authority to search, and we hold that in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a “reasonable” search under that Amendment.

That is, so long as Detective Dunne had probable cause to arrest Defendant, the search which led to the discovery of the handgun was lawful. Defendant does not argue that the search was an unlawful search incident to the arrest. Rather, Defendant argues that the arrest itself was unlawful, based on a lack of probable cause. Defendant is mistaken.

“Probable cause exists whenever reasonably trustworthy information or circumstances within a police officer’s knowledge are sufficient to warrant a person of reasonable caution to conclude that an offense has been committed by the person being arrested.” *United States v. Myers*, 308 F.3d 251, 255 (3d Cir. 2002) (citing *Beck v. Ohio*, 379 U.S. 89, 91 (1964)). In reaching this conclusion, a police officer may rely on his particular experience. See *Ornelas v. United States*, 571 U.S. 690, 700 (1996). Here, Defendant argues that he was never charged with assault. That argument is of no moment. The United States Court of Appeals for the Third Circuit has explained that “it is irrelevant to the probable cause analysis what crime a suspect is eventually charged with, or whether a person is later acquitted of the crime for which she or he was arrested.” *Wright v. City of Phila.*, 409 F.3d 595, 602 (3d Cir. 2005) (internal quotations and citations omitted). “Probable cause need only exist as to any offense that could be charged under the circumstances.” *Id.* (quoting *Barna v. City of Perth Amboy*, 42 F.3d 809, 819 (3d Cir. 1994)).

In Pennsylvania, simple assault is defined as an attempt to cause, or the intentional, knowing, or reckless causation of bodily injury to another person. 18 Pa. Cons. Stat. § 2701(a)(1). Detective Dunne testified that he witnessed Defendant strike Ms. Purnell with his knee and grab at her purse. He also witnessed Ms. Purnell crying as she left the Wawa store. Drawing from his experience, Detective Dunne concluded that an assault had occurred and, therefore, he had probable cause to arrest Defendant. Detective Dunne credibly testified that he believed that Defendant had either attempted to cause or had intentionally, knowingly or recklessly caused bodily injury to Ms. Purnell. Defendant devotes much of his argument to the reference in the police report that Defendant “*appeared to knee*” Ms. Purnell. Whether Defendant kneed Ms. Purnell or “*appeared*” to knee Ms. Purnell, however, is irrelevant to the determination of whether Detective Dunne had probable cause to arrest Defendant. By definition, an attempt to inflict injury is an assault. This Court finds that based on the evidence of record, Detective Dunne reasonably concluded that Defendant had committed an assault and, therefore, Detective Dunne had probable cause to arrest Defendant. The search incident to the arrest which led to the discovery of the handgun was lawful.

Accordingly, Defendant’s motion to suppress is denied.